

MONTANA LEGISLATIVE HISTORY

Chapter 569 19 79

Bill H 860 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) _____ c

no minutes { 3/17 _____ c
 _____ c
 _____ c
 Date Out 2/7 _____ c

S. Committee on Judiciary

Hearing Date(s) _____ c

3/16 ☒ c
 _____ c
 _____ c
3/19 ☒

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

CHAPTER NO. 569

HOUSE BILL NO. 860

INTRODUCED BY JUDICIARY COMMITTEE

SCULLY, CHAIRMAN

IN THE HOUSE

February 17, 1979	Introduced and referred to Committee on Judiciary.
February 17, 1979	Committee recommend bill do pass. Report adopted.
February 22, 1979	Second reading, do pass. Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 21, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1979	Second reading, concurred in.
March 27, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979	Returned from second house. Concurred in as amended.
March 31, 1979	Second reading, amendments adopted.
April 2, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 ~~House~~ BILL NO. 860
2 INTRODUCED BY Sen. Cas Scott
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A CLAIMANT
5 TO FIRST PERMIT AN ALLEGED LIBEL PUBLISHED IN OR BROADCAST
6 BY COMMUNICATIONS MEDIA TO BE CORRECTED BEFORE CLAIMING
7 PUNITIVE DAMAGES; PROVIDING A MEANS FOR SUCH CORRECTION AND
8 PROVIDING FOR THE USE OF SUCH CORRECTION AS A DEFENSE
9 AGAINST ALL BUT ACTUAL DAMAGES AND IN DETERMINING ACTUAL
10 DAMAGES."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Media management to be given opportunity to
14 publish correction prior to action for libel or slander. In
15 order to claim punitive damages because of any libelous or
16 defamatory publication in or broadcast on any newspaper,
17 magazine, periodical, radio or television station, or cable
18 television system, the libeled person shall first give those
19 alleged to be responsible or liable for the publication or
20 broadcast a reasonable opportunity to correct the libelous
21 or defamatory matter. Such opportunity shall be given by
22 notice in writing specifying the article or broadcast and
23 the statements therein which are claimed to be false and
24 defamatory and a statement of what are claimed to be the
25 true facts. The notice may also state the sources, if any,

1 from which the true facts may be ascertained with
2 definiteness and certainty.

3 Section 2. What constitutes a reasonable time for
4 correction. The first issue of a newspaper, magazine, or
5 periodical published after the expiration of 1 week from the
6 receipt of the notice provided for in [section 1] is within
7 a reasonable time for correction. In the case of radio and
8 television stations and cable television systems, a
9 broadcast made at the same time of day as the broadcast
10 complained of and of at least equal duration which is made
11 within 7 days following receipt of such notice is within a
12 reasonable time for correction.

13 Section 3. Content of correction. To the extent that
14 the true facts are, with reasonable diligence, ascertainable
15 with definiteness and certainty, only a retraction
16 constitutes a correction; otherwise the publication or
17 broadcast of the libeled person's statement of the true
18 facts or so much thereof as is not libelous of another,
19 scurrilous, or otherwise improper for publication or
20 broadcast, published or broadcast as his statement,
21 constitutes a correction within the meaning of [sections 1
22 through 3].

23 Section 4. Extent to which a correction is a defense
24 upon trial. If it appears upon trial that the publication or
25 broadcast was made under honest mistake or misapprehension,

1 then a correction timely published or broadcast without
2 comment in a position and type as prominent as the alleged
3 libel or in a broadcast made at the same time of day as the
4 broadcast complained of and of at least equal duration
5 constitutes a defense against the recovery of any damages
6 except actual damages, as well as being competent and
7 material in mitigation of actual damages to the extent the
8 correction published or broadcast does so mitigate them.

-End-

**THERE ARE NO MINUTES IN EXISTENCE FOR HOUSE
JUDICIARY, FEBRUARY 17, 1979**

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 16, 1979

The sixty-first meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, in room 331 of the capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 860:

This is an act to require a claimant to first permit an alleged libel published in or broadcast by communications media to be corrected before claiming punitive damages, etc. Representative Scully gave an explanation of this bill.

Bill Merrick, representing the Montana Broadcasters, stated that they support this bill. He said that sometimes, it is impossible for them to control what goes on the air and he said that sometimes there are live broadcasts in the community and they may become a party to an action by something that is broadcast and this bill gives them an opportunity to reply to it.

Bud Blanchette, representing the Western Broadcasting Company, Missoula, read a statement. See Exhibit A.

Hal Stearnes, representing the Montana Press Association, said there was at least twenty cases where somebody was irritated about something in the paper and he said, in every case, it was a misprint. He said in one instance they wrote "bottle scarred" instead of "battle scarred" and the relatives felt that it was not a misprint.

Mike Meloy, representing Lee Newspapers and Montana Press Association, said that this was almost the same as an Oregon statute that was tested a number of years ago and was found to be constitutional. He also addressed other problems.

There were no further proponents and no opponents.

Senator Van Valkenburg noted that this was a substantial change and he said there was no way the code commission could have come up with this.

Joan Mayer from the Legislative Council said that she did not know whether the courts will uphold it or not.

Senator Brown questioned how many lawsuits have been filed since it was declared unconstitutional. Mr. Meloy said none.

Senator Towe said there is punitive damages on page 1, but when you get over to page 3, it is not limited to punitive damages at all - it says "any damages" and he wondered if that was what was intended. He gave an explanation of general damages and punitive damages. Representative Scully said that in most libel suits, he has never seen a recovery over general damages.

Senator Towe questioned on page 2, line 25, the language "or misapprehension" and he wondered what does that mean and if they had any objections to taking that out.

There were no further questions and comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 691:

This is an act to permit the information of nonprofit corporations to provide prepaid legal services and to regulate the activities of such corporations. Representative Harrington explained the bill:

Les Loble, representing the Montana Legal Protection Plan Inc., and the State Bar of Montana, gave an explanation of this bill and said that this bill has been in for a number of years now. He explained the bill and what it would do.

J. C. Weingartner, representing the State Bar Association, stated that they support this bill.

There were no further proponents and no opponents.

Senator O'Hara questioned if they were quite sure that this would not solicit a lot of needless litigation. Mr. Loble stated that he did not think so.

DISPOSITION OF HOUSE BILL 860:

Joan Mayer offered some amendments (See attached) and she went over them. Senator Towe moved adoption of amendments # 1 through 8. The motion carried unanimously.

Senator Towe moved on page 2, line 25, that the bill be amended by striking "or misapprehension". The motion carried unanimously.

Senator Towe moved that the bill be amended on page 3, line 5 by striking "any" and inserting "punitive" and strike all of lines 6, 7, and 8. The motion carried unanimously.

Senator Van Valkenburg moved that the bill be amended on page 1, line 9, by striking "all but actual" and inserting "punitive" and on line 9 and 10, strike "and in determining actual damages." The motion carried unanimously.

Senator Brown stated that he still has problems with this bill to say that a person cannot collect punitive damages when they have been harmed and where someone is really libeled or defamed; and he was not sure he could go along with this.

Senator Towe stated that he believed that if there were an honest mistake, there is no way they can get punitive damage - punitive damages is something done with maliciousness, and with full knowledge that something is going to happen and there must be an evil motivation involved.

Senator Brown told of a story that was printed in the Lee newspapers when he was in the governor's office whereby an investigation was done by a reporter from another newspaper who did not check the facts. He stated that they did print a retraction, but that that is the kind of problem that is going to go on and he felt that the paper should be held responsible because of these types of situations.

Senator Turnage commented that you will still have a constitutional problem with this bill unless the attitude of the supreme court changes, and he did not feel that you can say that everyone is entitled to exemplary damages.

Senator Towe requested that Valencia Lane comment on that case and Ms. Lane, researcher for the committee, stated

that they said the old law was unconstitutional because of the right of access to the courts plus she thinks she could say that in section 7, it says that in libel actions you can go to the court and get defense.

Senator Van Valkenburg stated that the old law says you can not initiate an action and under this law, this says you can initiate an action.

Senator Towe commented that they can't start an action first without an opportunity to retract.

There was considerable discussion of the old law versus the new law.

Senator Towe commented that he liked the part of the statute that deals with retraction and Senator Olson questioned if they give the same space in the retraction as they do when they made the report. Joan Mayer stated that on page 3 it says that there must be a correction timely published or broadcast without comment in a position and type as prominent as the alleged libel or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration.

Senator Towe moved that the bill be concurred in, as amended. The motion carried with Senators Brown and Van Valkenburg voting no.

DISPOSITION OF HOUSE BILL 877:

This bill is an act to abolish the defense of mental disease or defect in criminal actions and this bill was sponsored by Representative Keedy. Senator Towe had sponsored a similar bill, which is Senate Bill 495. Senator Towe explained that his bill, Senate Bill 495, is now in the House, it was placed in a subcommittee, which came back with a do not pass and the subcommittee recommended making a study on the matter but the subcommittee's report has not been adopted by the whole committee.

Senator O'Hara wondered about placing a heavy burden on Warm Springs. Senator Towe stated that these people are going there now. They feel that, they would give an indeterminate sentence and once they are cured, they shouldn't spend any more time at Warm Springs than they do now; and he said that he doesn't know if the present situation works any better than he suggests but he feels that this way gives a far better approach.

HOUSE BILL NO. 860

INTRODUCED BY JUDICIARY COMMITTEE

SCULLY, CHAIRMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A CLAIMANT TO FIRST PERMIT AN ALLEGED LIBEL OR SLANDER PUBLISHED IN OR BROADCAST BY COMMUNICATIONS MEDIA TO BE CORRECTED BEFORE CLAIMING PUNITIVE DAMAGES; PROVIDING A MEANS FOR SUCH CORRECTION AND PROVIDING FOR THE USE OF SUCH CORRECTION AS A DEFENSE AGAINST ~~ALL--BUT--ACTUAL~~ PUNITIVE DAMAGES ~~AND--IN DETERMINING--ACTUAL--DAMAGES.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty.

Section 2. What constitutes a reasonable time for correction. The first issue of a newspaper, magazine, or periodical published after the expiration of 1 week from the receipt of the notice provided for in [section 1] is within a reasonable time for correction. In the case of radio and television stations and cable television systems, a broadcast made at the same time of day as the broadcast complained of and of at least equal duration which is made within 7 days following receipt of such notice is within a reasonable time for correction.

Section 3. Content of correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction; otherwise the publication or broadcast of the ~~libeled~~ DEFAMED person's statement of the true facts or so much thereof as is not ~~libelous~~ DEFAMATORY of another, scurrilous, or otherwise improper for publication or broadcast, published or broadcast as his statement, constitutes a correction within the meaning of [sections 1 through 3 ~~4~~].

Section 4. Extent to which a correction is a defense upon trial. If it appears upon trial that the publication or

1 broadcast COMPLAINED OF was made under honest mistake or
2 misapprehension; then a correction timely published or
3 broadcast without comment in a position and type as
4 prominent as the alleged libel or in a broadcast made at the
5 same time of day as the broadcast complained of and of at
6 least equal duration constitutes a defense against the
7 recovery of any PUNITIVE damages ~~except-actual-damages-as~~
8 ~~well-as-being-competent-and-material-in-mitigation-of-actual~~
9 ~~damages-to-the-extent-the-correction-published-or--broadcast~~
10 ~~does-so-mitigate-them.~~

-End-